

**Open Report on behalf of Andy Gutherson - Executive Director for Place**

Report to:	<b>Planning and Regulation Committee</b>
Date:	<b>14 February 2022</b>
Subject:	<b>Outcome of Planning Appeal – APP/Q2500/W/21/3276450 Envirotyre UK Ltd, Reed Point, Sutterton County Matter Application - B/20/0474</b>

**Summary:**

Supplementary Report

This report sets out the outcome of an appeal following the Council's decision to refuse planning permission relating to Envirotyre UK Limited's (the Appellant) application to remove condition 6 of planning permission B/16/0217. The application sought to allow outside storage of tyres to take place when the site is not in operation. Contrary to the Officers recommendation, the Planning & Regulation Committee refused the application, and the Appellant subsequently made an appeal against that decision to the Planning Inspectorate.

The appeal was determined by written representations and having considered the arguments and representations made by both the Appellant and the Council, the Planning Inspector decided to find in favour of the Appellant. Consequently, the appeal was allowed and a claim for costs was partially awarded.

A copy of the Inspector's decision letter is attached as Appendix A.

**Recommendation:**

That the decision of the Planning Inspectorate is noted.

**Background**

1. In November 2020 the Appellant made an application (reference: B/20/0474) seeking planning permission to remove condition 6 of planning permission B/16/0217 to allow outside storage of tyres to take place when the site is not in operation. A report on that application was brought to the Planning & Regulation Committee on 15 February 2021 where, contrary to the Officer's recommendation,

the Committee resolved to refuse the application on basis that the storage of tyres outside the building on a more permanent arrangement would have an adverse impact on residential amenity due to an increased risk of fire and that the outside storage would have a detrimental impact on visual amenity. In light of the Committee's resolution a report was subsequently presented and approved at the Committees meeting on 15 March 2021 setting out the wording and policy references for the reason for refusal.

2. The Appellant subsequently made an appeal against the Committee's decision to refuse the application to the Planning Inspectorate. The appeal was determined by written representations and having considered the arguments and representations made by both the Appellant and the Council, the Planning Inspector decided to find in favour of the Appellant. Consequently, the appeal was allowed and a claim for costs was partially awarded.
3. A copy of the Inspector's decision is attached to this report as Appendix A.

<b>RECOMMENDATIONS</b>
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That the contents of the report are noted.

**Appendix**

These are listed below and attached at the back of the report	
Appendix A	Planning Inspectorate's Appeal Decision dated 27 January 2022

This report was written by Marc Willis who can be contacted on 01522 782070 or [dev\\_planningsupport@lincolnshire.gov.uk](mailto:dev_planningsupport@lincolnshire.gov.uk)



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## Appeal Decision

Site visit made on 25 January 2022

**by D Hartley BA (Hons) MTP MBA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 January 2022**

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**Appeal Ref: APP/Q2500/W/21/3276450**

**Reed Point, Spalding Road, Sutterton PE20 2EP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Envirotyre UK Limited against the decision of Lincolnshire County Council.
  - The application Ref B/20/0474 (LCC Ref No PL/0126/20), dated 9 November 2020, was refused by notice dated 15 March 2020.
  - The application sought planning permission to vary condition 2 of planning permission B18/0167/15 (approved plans) – to create an additional external storage area without complying with a condition attached to planning permission Ref B/16/0217 (LCC Ref No B18/0217/16), dated 9 August 2016.
  - The condition in dispute is No 6 which states that *'no tyres or bales shall be stored outside the building beyond the hours of operations of the site as set out in condition 10. Any tyres or bales stored outside the building shall not exceed a height of 2m (loose tyres) or 3m (baled tyres).'*
  - The reason given for the condition is *'in order to minimise any visual impacts arising from the external storage of tyres and bales on the appearance of the surrounding area'.*
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### Decision

1. The appeal is allowed and planning permission is approved for the change of use of the existing haulage yard and workshop and erection of a building for the importation, sorting and baling of end-of-life tyres and the construction of a surface water mitigation scheme and security fencing to the boundary at Reed Point, Spalding Road, Sutterton, PE20 2EP, in accordance with application Ref B/20/0474 (LCC Ref No PL/0126/20) dated 9 November 2020, without compliance with condition 06 previously imposed on planning permission Ref B/16/0217 (LCC Ref No B18/0217/16) dated 9 August 2016, and subject to the conditions in the attached schedule.

### Application for Costs

2. An application for costs was made by Envirotyre UK Ltd against Lincolnshire County Council. This application is the subject of a separate Decision.

## **Preliminary and Procedural Matters**

3. Planning permission was first approved on appeal in May 2012<sup>1</sup> for the erection of a storage building and change of use of a former haulage yard and workshop to the importation, sorting and bailing of end of life tyres. In 2015, planning permission was approved to modify the aforementioned planning permission and this included a planning permission that permitted the outside storage of tyres during the time when the site was operational. Planning permission was approved<sup>2</sup> on 9 August 2016 for the same amended development albeit with the creation of an additional external tyre storage area and subject to condition No 06 that reads '*no tyres or bales shall be stored outside the building beyond the hours of operations of the site as set out in condition No 10. Any tyres or bales stored outside the building shall not exceed a height of 2m (loose tyres or 3m (baled tyres)'*
4. The application which is the subject of this appeal seeks to delete the first sentence of condition No 06. However, the appellant has clarified that the second part of the condition would remain on the grant of a new planning permission as per the discussions that took place with the Council prior to the determination of the appeal.
5. For the avoidance of doubt, condition No 10, which is not proposed to be varied or deleted reads '*no operations on the site associated with the development hereby permitted shall take place outside the hours of 07:00 to 22:00 Monday to Friday and 07:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays'*
6. In my decision above, I have used the description of development from the original 2012 planning permission. This more succinctly describes the proposed development when compared to the description of development in the August 2016 planning permission. It remains accurate and precise in terms of this appeal proposal and the main parties have confirmed that they share this view.

## **Main Issues**

7. The main issue is the effect of the proposed variation of condition No 06 of planning application Ref No B/16/0217 (LCC Ref No B18/0217/16) on (i) the character and appearance of the area, and (ii) the living conditions of the occupiers of nearby residential properties in respect of the potential for fire and/or pollution from the permanent outside storage of tyres.

## **Reasons**

### *Character and appearance*

8. The existing planning permission for the site permits the outside storage of tyres and tyre bales, albeit that this is confined to the hours as specified in condition No 10 of planning application Ref No B/16/0217 (LCC Ref No B18/0217/16). I do not doubt that the business on the site has grown and expanded over the years. The evidence indicates that it employs 20 people. Furthermore, I note the appellant's comment about the amount of time that it takes to move tyres from outside to inside the building and vice versa and that this has some adverse economic impacts. It is of note that the appellant says

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<sup>1</sup> APP/Q2500/A/12/2167819

<sup>2</sup> Application Ref No B/16/0217 (LCC Ref No B18/0217/16)

that the appeal site is the only one of its kind in Lincolnshire and that it provides a vital role in dealing with end-of-life tyres arising in the country and neighbouring counties.

9. The application would have the effect of permanently storing tyres and baled tyres within the identified locations within the site as detailed in drawing No 981-8\_SK\_SP01 Rev A. As part of my site visit, I was able to consider the boundary treatment around the site (i.e. palisade fence and hedge) and the relationship with the surrounding countryside and neighbouring residential properties. Taking this into account, I am satisfied that subject to retaining control by condition in respect of the height and location of permanently stored outside tyres and baled tyres on the site, such a change to the planning permission would not have a detrimental impact on the character and appearance of the area or the scenic beauty of the surrounding countryside. Indeed, longer distance public views of stored tyres, which would range in height from 2 to 3 metres, would not be conspicuous or out of place when seen from fleeting views from the surrounding A17, Broad Lane and nearby residential properties taking into account their close relationship with the more imposing scale of the main building on the site, and the partial screening effect afforded by the boundary palisade fencing and vegetation.
10. For the above reasons, and subject to imposing an amended condition relating to controlling the height and siting of the outside storage of tyres and baled tyres, the proposal would not cause harm to the character and appearance of the area. On this basis, the proposal would accord with the design, character and appearance requirements of policy DM6 of the Lincolnshire Minerals and Waste Local Plan Core Strategy and Development Management Policies 2016 (M&WLP) and Chapter 12 of the National Planning Policy Framework 2021 (the Framework).

*Living conditions – fire and pollution*

11. Concerns have been raised by the Council's Planning Committee and the public about the permanent storage of tyres and baled tyres on the site relative to the potentially adverse effect that this may have on the occupiers of neighbouring dwellings, namely Autumn Lodge and Sharway, should they set fire. Concerns are also expressed about the effect of a fire on levels of air pollution in the area.
12. While the proposal would represent a change to the existing situation, in so far that it is proposed to permanently store tyres outside, it should be recognised that a considerable amount of outside tyre storage is already permitted. I accept that this is not in the evening or early mornings and not on a Saturday afternoon or Sunday/Bank Holiday. Nonetheless, the existing planning permission does permit outside tyre storage for significant amounts of time.
13. I would also add that a fire could take place inside or outside the building, although I do accept that if the tyres were located within the building that might initially contain a possible fire and, if detected, therefore minimise levels of associated pollution in the locality. However, it could also be said that a fire associated with tyres inside a building could equally have adverse consequences from a pollution of view and of course may not initially be detected as quickly as tyres stored outside.

14. In any event, and overall, I do not find that the proposal would, in relative terms, lead to a significant increase in the risk of fire or pollution on or from the site when compared to the existing and approved situation. To that extent, I do not find that the evidence indicates that the proposal would result in any material increase in the risk of fire or pollution in the area and hence no adverse harm would be caused to the living conditions of the occupiers of nearby residential properties or indeed the public at large.
15. In reaching the above view, I am cognisant that the site is regulated by the Environment Agency under a Standard Rules Permit and that includes having measures in place to reduce the risk of fire during operation of the site and the monitoring of the site out of hours. The evidence is that the site is secured by palisade fencing and there are 16 CCTV cameras that alert employees in respect of movements on the site and thermal anomalies. In addition, the Planning Committee report states that *'there is an existing fire hydrant located at the entrance of the site on Spalding Road'* and *'the site has a sealed drainage system which contains any surface waters derived from the site and which has the capacity to store 72,000 litres of water which can be used and reclaimed in the event of a fire'*.
16. Concerns have been raised by the public about the effects of a fire on the site, particularly given that a fire took place in Kirton relating to stored tyres. However, the evidence indicates that this site may have operated without a planning permission or Environmental Permit at the time. I do not know the specific circumstances relating to the fire at Kirton, but, in any event, the evidence is that measures are and would be in place on the appeal site to suitably minimise the risk from fire or indeed any pollution from surface water run-off.
17. Comments have been made by the Council about the potential for arson or tyres setting fire due to *'extreme heat during hot weather'* or from *'Chinese lanterns'*. Tyres are not prone to self-ignition due to hot weather as they must be heated to at least 400 degree Celsius for a period of several minutes prior to ignition. In this regard, the Council's comment about tyres setting fire due to extreme heat during hot weather is not reasonably substantiated or indeed accurate. The potential for a Chinese lantern to land on the site is of course remote. Furthermore, it is likely that if one did land on the site it would no longer be ignited and, even if it were still ignited it would unlikely heat tyres to the sort of temperature needed for a fire to take place.
18. It is of note that Lincolnshire Fire and Rescue Service has not objected to this proposal (no comments were made by them but they did not object to original planning permission for the site) and the Environment Agency has commented that *'we are satisfied that condition 6 can be discharged'* and *'the existing environmental permit (Environmental Permitting [England & Wales] Regulations 2016) would need to be varied in order to allow the storage of materials outside'*. I am satisfied that there are sufficient and separate powers of control to deal with minimising the potential fire risk and associated pollution arising from the proposal. This separate power of control relates to the requirements of the Environmental Permitting [England & Wales] Regulations 2016.
19. For the above reasons, I conclude that the proposal would not have a detrimental effect on the living conditions of the occupiers of neighbouring

residents, including also those to the north of the site, or the public at large in respect of the risk of fire or from a pollution point of view. Consequently, the proposal would accord with the amenity and pollution minimisation requirements of policies DM3 and DM6 of the M&WLP and paragraph 130(f) of the Framework.

### **Other Matters**

20. I have taken into account representations made by other interested parties. There would be some noise and activity from the use of machinery in terms of the stacking and racking of tyres outside. However, this takes place already on the site and a variation to condition No 06 would have the effect of removing the current need to move tyres back into the building to reflect the operational hours in condition No 10. Therefore, and in relative terms, I do not find that the proposal would lead to any significant or harmful levels of noise and disturbance in respect of surrounding existing residents or indeed in respect of the occupants of any new residential development in the area.
21. Concern has been raised about the business expanding, although there is no evidence before me to refute the claim made in the Planning Committee report that *'the original application states that the maximum throughput of the site was expected to be 10,400 tonnes per annum and the applicant has stated that whilst the business has grown the tonnage of tyres processed annually has never yet achieved that originally proposed'*. There is no evidence that the proposal would result in any unacceptable or severe impacts on the surrounding road network from a highway safety or traffic congestion point of view.

### **Conditions**

22. It should be noted that as I am allowing the appeal a new permission is created and the original permission remains extant and unaltered along with the conditions attached to it. The conditions set out in the accompanying schedule are based on those suggested by the Council. They have all been agreed by the appellant.
23. For the avoidance of doubt, a condition is necessary confirming that as development has already commenced, the planning permission takes effect immediately. In the interests of certainty, and to define the scope of the planning permission, it is also necessary to impose a drawings condition.
24. In order to protect the site and the area from flooding, conditions are necessary relating to the submitted flood risk assessment and the continued implementation of the surface water run-off and fire management system.
25. In the interests of the character and appearance of the area, conditions are necessary relating to areas where tyres can be stored, and including height, and the continued use of materials for the appeal building.
26. In the interests of the living conditions of the occupiers of nearby residential properties, conditions are included relating to not processing, shredding or treating tyres on site, no waste other than the end-of-life tyres being brought onto the site, and controls relating to hours of use and deliveries at the site.

27. Finally, in the interests of highway safety, a condition is necessary to ensure that space remains at all times for the parking, loading, unloading and manoeuvring of vehicles within the site.

**Conclusion**

28. Subject to the imposition of a varied condition No 06, there are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

*D Hartley*

INSPECTOR

### **Schedule of Conditions**

1. This permission (being granted under Section 73A of the Town and Country Planning Act 1990, as amended) has effect from the date of this decision notice as the development has been implemented and commenced.
2. The development hereby permitted shall be carried out in accordance with the following plans:
  - a. Drawing No. 981-8\_SK\_SP01 Rev A – Site Plan
  - b. Drawing No. 20411/03 Rev. J - Proposed External Works & Drainage Layout
  - c. Drawing No. 20411/05 Rev. D - External Works Sections and Details
3. The development shall continue to be carried out in accordance with the approved Flood Risk Assessment (RM Associates, Version 1, June 2011)
4. The surface water run-off and fire water management system as detailed on Drawing Nos. 20411/03 Rev. J "Proposed External Works and Drainage Layout" and 20411/05 Rev. D "External Works Sections and Details" shall continue to be implemented and retained at all times whilst the use hereby permitted subsists.
5. The facing materials of the building shall continue to be goose wing grey plastic coated metal sheeting.
6. Any tyres or bales stored outside the building shall not exceed a height of 2m (loose tyres) or 3m (baled tyres) and tyres shall only be stored in the green and pink coloured areas on Drawing No 981-8\_SK\_SP01 Rev A – Site Plan.
7. Other than the use of the hydraulic shear which is stationed within the existing transfer building, there shall be no processing, shredding or treatment of the tyres on the site at any time.
8. No waste other than end-of-life tyres shall be brought onto the site.
9. Vehicles associated with deliveries to or from the site shall only be permitted access to the site between 07:00 to 19:00 Monday to Friday and 07:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.
10. No operations on the site associated with the development hereby permitted shall take place outside the hours of 07:00 to 22:00 Monday to Friday and 07:00 to 13:00 on Saturdays and at no time on Sundays and Bank Holidays.
11. Adequate space shall be available at all times for the parking, loading, unloading and manoeuvring of vehicles within the site.

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